

30 June 1947

OGC Has Reviewed

MEMORANDUM TO FILES

WILLIAM W. BRUNSWICK v. THE UNITED STATES
90 Court of Claims 285, 8 January 1940

"Where a Foreign Service officer, retired for disability under the act of May 24, 1924, as amended by the act of February 23, 1931, and drawing retired pay, was subsequently employed at different times in three temporary positions in the executive branch of the Government, it is held that he is not prohibited from drawing both the salary of such temporary position and the annuity as a retired Foreign Service officer.

"In the instant case, there is no question of 'double salary,' but only one salary and one annuity.

"Retired pay' does not constitute salary, but is in the nature of an annuity.

"There is no statutory provision against plaintiff receiving an annuity under the Foreign Service Act and being employed at the same time in a temporary position not under that act."

FACTS: Plaintiff was appointed to the position of Foreign Service officer under Section 3 of the Act of 24 May 1924, 43 Stat. 140. Previously, he had been employed in the Foreign Service of the United States continuously from 24 April 1907. On 15 August 1932, plaintiff was retired under Section 26(j) of the Act of 23 February 1941, (46 Stat. 1207) amending the Act of 1924. His retirement of \$1,625.12 was paid until this case was commenced. Plaintiff held three temporary positions in other branches of the Government, his last position being in the Treasury Department, his compensation being \$1,625.00 per annum, which position he held until commencement of this suit. The position he then held was in nowise connected with or under Civil Service. The Comptroller General has caused to be withheld from and has refused to pay plaintiff his retirement pay from 1 August 1932 to the date of filing of petition herein.

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The United States relied on 5 U.S.C.A. 58, and held, that Statute precluded plaintiff from receiving his retired pay in the amount of \$1,523.12 and his salary for services contemporaneously rendered the United States amounting to \$1,620.00 per annum. The Court of Claims held that the retired pay of the plaintiff was not salary within the meaning of 5 U.S.C.A. 58. It was pointed out that part of plaintiff's retired pay was taken from his earned salary in advance of his retirement, and the rest of his retired pay was a gratuity, or, as stated by the Court in *Geddes v. United States*, 58 Court of Claims 428, an "honorary form of pension".

It was conceded that there is no statutory provision against plaintiff receiving an annuity under the Foreign Service Act and being employed at the same time in a temporary position not under that Act. The Court held it was clear that Congress placed no limitation on annuities granted under the Foreign Service Act. In fact, it is clearly indicated that Congress intended annuitants under that Act should be paid annuities in full, in view of the fact that Congress having originally placed a limitation on such annuities and, after seven years of trial, realizing the burden it had put upon poor men in the Foreign Service with small annuities and no other means of livelihood, wiped out the limitation entirely under the amendatory Act of 23 February 1931 because the limitation was "a particular hardship on retired officers with low annuities".

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Assistant General Counsel

NOTE: However, the undersigned has been informed by Mrs. Katherine Hallow of the State Department that State relies on this decision in answering inquiries from other Government agencies and that, to her knowledge, there has been no modifying or overruling decision later than the Brunswick case.

JSW:mbt